

**NATURAL RESOURCES COMMISSION**

Tippecanoe Battlefield Museum  
200 Battle Ground Avenue  
Battle Ground, Indiana

**September 22, 2009 Meeting****MEMBERS PRESENT**

Bryan Poynter, Chair  
Jane Ann Stautz, Vice Chair  
Robert Carter, Jr., Secretary  
Patrick Early  
Phil French  
Doug Grant  
Mary Ann Habeeb  
Brian Blackford  
Donald Ruch  
Michael Reed

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Stephen Lucas  
Sandra Jensen  
Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

John Davis	Executive Office
Ron McAhrn	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
John Seifert	Forestry
Dan Ernst	Forestry
Tom Lyons	Forestry
James Allen	Forestry
Jeremy Kolaks	Forestry
Linnea Petercheff	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Felix Hensley	Law Enforcement
Steve Hunter	Law Enforcement
Dave Fox	Indiana State Museum and Historic Sites

Kathleen McLary	Indiana State Museum and Historic Sites
Jim Hebenstreit	Water
Phil Marshall	Entomology and Plant Pathology
Megan Abraham	Entomology and Plant Pathology
Dan Bortner	State Parks and Reservoirs
Mike Mycroft	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs
Jason Getz	State Parks and Reservoirs
Phil Bloom	Communications

## **GUESTS PRESENT**

Ethan Lowe  
Carl Kelle  
Mike Phelps

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 12:45 p.m., EDT, on September 22, 2009, at the Tippecanoe Battlefield Museum, Battleground, Indiana. With ten members present, the Chair observed a quorum.

The Chair thanked Jason Getz, Property Manager of Prophetstown State Park, and other property staff for a leading “quite a tour” and providing history of the park. “It’s certainly an accomplishment and a success in progress.” He also thanked the Tippecanoe Battlefield Museum personnel for hosting the Commission.

Patrick Early moved to approve the minutes of the Commission’s July 21, 2009 meeting. Michael Reed seconded the motion. Upon a voice vote, the motion carried.

## **Reports of the Director, Deputies Director, and Advisory Council**

Director Robert Carter, Jr., provided his report. He also thanked the Tippecanoe Battlefield Museum staff for hosting the meeting and thanked the Prophetstown State Park staff for providing a “great tour” of the park property.

The Director announced that the Hoosier Outdoor Experience was set for September 25<sup>th</sup> through the 27<sup>th</sup> at Fort Harrison State Park. “We hope to have in the neighborhood of 20,000 to 50,000 visitors.” He said that the outdoor experience would provide a new vision to those that “really have not had the opportunity to experience” outdoor activities such as canoeing, backpacking, hiking, fishing, trap shooting and similar activities.

The Director said the Department has a new 28-guest room lodge, Fort Harrison State Park Inn, formerly known as the Kendall Inn. “We hope to have the [inn] doing pretty well pretty soon.” He then invited Commission members to visit the facility.

He said the Young Hoosier Conservation Corps (the “YHCC”) was a “highly successful” program” initiated this summer that included approximately 1,900 youth in property construction and maintenance projects funded through federal stimulus program. He said the federal government approved an extension of the YHCC into October. His intention is provide the Commission with a presentation of YHCC activities during the November meeting.

The Chair commented, “I know that it has been a busy summer. I saw some of the work that was done at Prophetstown. It’s quite impressive.”

The Director said that Department Executive Office staff and he traveled bi-weekly throughout the state to view progress of YHCC projects. “It has been a good experience for all of us.”

John Davis, Deputy Director, Bureau of Lands and Cultural Resources, explained that the YHCC has been “successful. We are toward the end of those relationships this fall, and we’ll be looking forward to next year to be even more successful and more active.” He said the Department is moving into its “fall agenda”, which is the beginning of “lots of visitation in some of the parks, hunting season, and legislative season”. The Natural Resources Study Committee met for the first time last week and has scheduled an overnight meeting near Falls of the Ohio State Park. Future Committee agendas are set to consider car-deer accidents, payment in lieu of taxes, along with other ideas for new legislation.

Ron McAhrn, Deputy Director, Bureau of Resource Regulation, said he first wanted to make “just an observation from the meeting today, and some of the things that we are going to do later. I’m just struck by the cooperation among the agencies—INDOT, ourselves, and IDEM—on some of the work at Prophetstown. I think that’s very beneficial.” Some of the rules for consideration today are “also the outgrowth of some cooperation” between the Department and other state agencies. “I take pride in being able to be involved in that.”

McAhrn said the legislative Water Resources Study Committee will meet “to deal strictly with water issues, such as water resource planning, and maintenance of natural streams in Indiana and the responsibilities for that maintenance work. It’s getting to be quite a controversial topic.”

Patrick Early, Chair of the Advisory Council, said the Advisory Council has held four of the five public meetings planned to review suggestions, for rule amendment to 312 IAC 9, received through the Comprehensive Fish and Wildlife Rule Enhancement Project. The Advisory Council met at Fort Harrison State Park on September 14 to review suggestions regarding the brown trout fishery in the Brookville tail water. He commented that a “big contingency from Brookville voiced concerns” about some of the suggestions. “We reiterated that none of [the suggestions] were proposals; that we were giving hearing time to any suggestion that people have made.” Early said that he believed some of the concerns were addressed at the public meeting, but the Advisory Council also agreed to another public meeting in the Brookville area in early October to assure a local opportunity for additional comments.

Early said the final public meeting, to review suggestions associated with fishing rules other than at the Brookville tail waters, is scheduled for October 14, 2009. At the conclusion of the public

meetings, the Steering Committee would meet to “discuss all of the findings, all of the testimony, and all of the recommendations that seem to have merit that come out of this process”. He said the Advisory Council was slated in December to “finalize recommendations” for presentation to the Commission at its January 2010 meeting.

Bryan Poynter thanked Patrick Early for his efforts. “Chairman Early has done a wonderful job, and we should be so fortunate to have him as a steward for this because it has been a complicated process. Sandy [Jensen] has kept everybody on task. We are remarkably on schedule. The merits of this project have really leant themselves to some really good deliberative commentary. There has been a tremendous amount of goodwill that’s been created in this as well because of how well [Chairman Early has] handled those meetings.”

#### **CHAIR AND VICE CHAIR**

##### **Updates on Commission and Committee activities**

Jane Ann Stautz, Chair of the Commission’s AOPA Committee, reported the Committee has not met since the spring.

#### **DNR, EXECUTIVE OFFICE**

##### **Consideration and identification of any topic appropriate for referral to the Advisory Council**

No new topics were referred to the Advisory Council.

#### **PERSONNEL ACTION (Permanent Appointment)**

##### **Consideration of permanent appointment of Dave W. Fox, Property Manager of the Gene Stratton-Porter State Historic Site, Rome City, Indiana**

Kathleen McLary introduced Dave W. Fox and praised his performance at the Gene Stratton-Porter State Historic Site. He has worked “very hard over the last year” on upgrading and maintaining “the cultural resources at the site, as well as working on community relations and publicity.”

Jane Ann Stautz moved for permanent appointment of Dave Fox as Property Manager of the Gene Stratton-Porter State Historic Site. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

**Consideration of permanent appointment of Todd Eubank, Assistant Property Manager, Starve Hollow State Recreation Area and Jackson-Washington State Forest, Vallonia (and Brownstown) Indiana**

Dan Ernst, Assistant State Forester with the Division of Forestry, presented this item. He gave his enthusiastic support to the permanent appointment of Todd Eubank as Assistant Property Manager at Starve Hollow State Recreation Area and at Jackson-Washington State Forest. “It has been a very busy year for Todd [Eubank], and he has done a wonderful, wonderful job. He is a very, very fine young man and a fine professional to add to the Department of Natural Resources, Division of Forestry.” He said Eubank wanted to attend today’s meeting but was unable due to prior commitments. Ernst distributed a letter from Eubank which stated in substantive parts:

I apologize for not being here today, but I had prior family obligations that prevented me from speaking directly with you.

The past year has been a very rewarding but challenging experience in which I am greatly appreciative for. The opportunity to represent the DNR Division of Forestry at Starve Hollow SRA and Jackson-Washington State Forest is a privilege and I look forward to many years of service to the public and our natural resources.

With your approval I accept permanent appointment as Assistant Property Manager.

Brian Blackford moved for permanent appointment of Todd Eubank as Assistant Property Manager of Starve Hollow State Recreation Area and Jackson-Washington State Forest. Phil French seconded the motion. Upon a voice vote, the motion carried.

**DIVISION OF FISH AND WILDLIFE**

**Consideration of amendment to the nonrule policy document (Information Bulletin #25) addressing of caves and karst resource management on Department properties; Administrative Cause No. 09-124D**

John Davis said Section 2 of the nonrule policy document references the creation of the Cave Task Force. The key amendment is added as a new Section 5 to address the temporary closure of caves on Department properties due to the white-nosed syndrome. The syndrome is a fungal disease that has killed “95% of bats in many caves in the East and is spreading this direction.” The Department cave closure, which was initiated spring 2009 in cooperation with the Indiana Karst Conservancy and other Indiana caving groups, is an attempt to “try to affect the protocol” for people entering caves that are not closed. “We are trying to make sure that humans don’t track this fungus somehow into our caves.” Unfortunately, the prevailing view is the fungus is being spread by the bats themselves and will “eventually come to Indiana.”

Davis explained the amendment to the nonrule policy document “brings the policy of the Commission into line with how [the Department is] managing the resource.” He added, “We

promised everyone we would re-evaluate one year after the closing. We are going to do that in spring 2010. We will decide then what to do for next year.”

Doug Grant moved to approve amendments to nonrule policy document, Information Bulletin #25, governing caves and karst resource management on properties owned or leased by the Department of Natural Resources. Mary Ann Habeeb seconded the motion. Upon a voice vote, the motion carried.

## **DIVISION OF WATER**

### **Consideration for preliminary adoption of proposed amendments to 312 IAC 11 to define and establish standards for a general license to place aerators within public freshwater lakes; Administrative Cause No. 09-147W**

Jim Hebenstreit, Assistant Director for the Division of Water, provided the Commission members with a revised draft of the proposed rule amendments copied on yellow paper. He said the rule was developed in cooperation with the Division of Law Enforcement, Division of Fish and Wildlife, and the Division of Water. The amendments would establish general license standards for placement of aerators on public freshwater lakes. He said there has been a recent increase in applications from persons seeking to place aerators and in the placement of aerators without permits. The Division of Law Enforcement has a “major concern for placement of aerators during the winter months, because the aerator basically eliminates the ice and that poses a threat to snowmobilers, anglers, and others.”

Hebenstreit said a general license in the proposed rule would authorize the placement of an aerator from March through October. For other months, a person would need to apply with the Division of Water for an individual permit. The revised draft adds at 312 IAC 11-3-1.2(c)(3) a further clarification to limit the effects of an aerator to the user’s riparian zone. The revised draft also removes the proposed amendment at 312 IAC 11-3-1.2(c)(6), requiring the placement of the aerator “at least five (5) feet of clearance on both sides of the riparian line”. With this removal, the subdivisions are renumbered.

Hebenstreit said Maj. Felix Hensley, Indiana State Boating Law Administrator, was present to address questions regarding safety. He said Linnea Petercheff from the Division of Fish and Wildlife was present to address questions regarding impacts to fish and wildlife.

Michael Reed inquired whether the proposed rule would extend regulatory jurisdiction to reservoirs. “Why is the proposal limited to freshwater lakes?”

Hebenstreit responded that most public freshwater lakes are located in the northern third of the state. That was the location where the Department has perceived a problem.

Reed continued, “The issue doesn’t exist on the lakes to the south?”

Hebenstreit answered, “It hasn’t been brought to our attention. We may very well find out that there is an issue and have to come back to you.”

Reed said, “Clearly, I think it would” be also an issue on reservoirs.

Steve Lucas of the Commission’s Division of Hearings added that the statutory authority comes from Indiana Code 14-26-2 which governs “public freshwater lakes”. The proposal is an amendment to the rules administering public freshwater lakes.

Reed asked, “So, we have no jurisdiction on the reservoirs?”

Lucas responded that a reservoir could be a public freshwater lake. If a reservoir is not a public freshwater lake, the Commission might have jurisdiction through another statute governing public waters. A rule could be drafted to govern reservoirs that were constructed by the U.S. Army Corps and administered by the DNR or that impounded navigable waters.

Hebenstreit explained that the issue has not been observed on reservoirs, perhaps because with the larger reservoirs the lake levels are lowered during the winter. “Part of the rationale for some of these aerators is to keep ice off a pier. At the lower winter pool on the big reservoirs, you don’t have the ice impact on piers.”

Reed asked, “Is the driver, though, safety for snowmobilers? What is driving the desire for this rulemaking?”

Ron McAhron stated, “This is another place where we’ve not had a clear rule laying out what you could and couldn’t do. We had an issue come up absent a rule. It started with a safety issue.”

Maj. Felix Hensley said the Division of Fish and Wildlife, the Division of Water, and the Division of Law Enforcement initiated review of the issue during the “winter before last. We actually had a snowmobile that went through thin ice that was generated by an aerator on Sylvan Lake. Even before that, however, we had safety concerns. Landowners may want to leave their piers in year round, and so they use an aerator on a timer, and some even vacation in other states. Consequently, what happens is an aerator will kick on, thin the ice maybe even to open water, and then the aerator goes off. A lot of times a very thin skim of ice will freeze over the top.” He said those using the lake for winter recreation may not be aware that an aerator was used in the area, or if a person is on the lake at night, the person may go into an area of thin ice created by an aerator and not see the problem. “Our goal was to come up with some idea where we could build in the safety factors where lake users were protected, riparian owners had their rights, and [the rule proposal] is a result of that.”

Reed said that he was “very familiar” with the issue. In his perspective, “The safety problem is not limited to the northern third of the state or freshwater lakes. Your argument on the pooling of the reservoirs, in my view, is not accurate.” Reed said he lives on a central Indiana reservoir, and “I can guarantee you that it doesn’t go down every year. If we are trying to protect the snowmobilers and skaters, which we should be doing, then we should expand or look at this thing to include all of the lakes, because if it is a safety issue, it’s a safety issue.”

Lucas said, “We can certainly do that, and we will take that as an instruction from the Commission. We will look at the use of aerators in the context of other waterways and report back to the Commission.” He added that the Commission’s ability to write rules is dependent upon a grant of statutory authority, however, and the Commission likely does not have authority to address aerators on all reservoirs. “I think it may present an interesting question whether the Commission has jurisdiction to do this on Geist Reservoir or Morse Reservoir.”

Reed said, “Fair enough.”

Jane Ann Stautz asked, “With regard to those that are required to get a license or a permit, what are the normal requirements or restrictions? Are there postings then that if they would request to have an aerator during the winter months, then are there postings required?”

Hebenstreit said there would be similar requirements that are listed in the proposed rule, such as signage, but so far the Division of Water has denied applications based on safety concerns, and these are currently under administrative review.

Stautz said, “Speaking of no standards—that would be my other point with regard to the license or request for permits to place aerators. There should be clearly spelled out criteria as to whether you would approve or deny [an individual permit application] as well. We will continue to see more of these. If we go forward with this proposed rule, there will probably be more requests for those types of permits to have an aerator. I would want to make sure that there are clear criteria and how those are approved.”

Mary Ann Habeeb identified the need in 312 IAC 11-3-1.2(c)(6) for a technical clarification. The word “square” should be added to the proposed rule to indicate not more than 625 “square” feet of aquatic vegetation can be removed by the operation of an aerator.

Hebenstreit agreed with Habeeb’s recommendation. “The area is intended to be designated in square feet.”

The Chair said, “Obviously, the AOPA Committee and the administrative law judges need some clarity here. Good points were raised by members of the Commission.” He asked Lucas for suggestions as to Commission procedure.

Lucas responded the Commission could first give the proposed rule preliminary adoption with the technical amendment at 312 IAC 11-3-1.2(c)(6) as recommended by Mary Ann Habeeb. Doing so would allow the proposal to move forward for public freshwater lakes. Second, the Commission could offer a resolution to instruct the Department and Commission staff to “look at the feasibility of extending this proposition to public waters that are not public freshwater lakes.” Third, the Commission could offer a resolution asking the DNR and NRC to review the feasibility of drafting rules to set standards “applicable to the individual licensure of aerators, which would not qualify for a general license, as requested by the Vice Chair.”

Mary Ann Habeeb moved to give preliminary adoption to the proposed rule as presented by Jim Hebenstreit and with an amendment to 312 IAC 11-3-1.2(c)(6) adding the word “square” after

the words “six hundred twenty-five (625)”. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Stautz moved that the Department and Commission staffs be directed to review the applicability of the placement of aerators in public waters in addition to public freshwater lakes, as well as to develop criteria for the individual licensure of aerators in public freshwater lakes. Habeeb seconded the motion. Upon a voice vote, the motion carried.

**Consideration of an application by the Lake Edgewood Conservancy District for a Flood Control Revolving Fund loan in the amount of \$151,000 for costs associated with the District’s establishment and for engineering costs associated with the preparation of the District Plan**

Ron McAhron, Deputy Director, presented this item on behalf of Terri Price, Water Planner for the Division of Water. The Lake Edgewood Conservancy District, Morgan County, applied for a loan through the Flood Control Revolving Fund to repair damage to the lake and dam caused by 2008 flooding. The Lake Edgewood Conservancy District was established March 2009. The loan funds would be used for the engineering costs associated with the district plan, including engineering plans for dam repair. McAhron said the lake is approximately 53 acres, and the dam was constructed in the late 1950s.

McAhron said the Lake Edgewood Conservancy District has applied for a \$151,000 loan, with 3% interest and ten individual payments of \$15,100. The Flood Control Revolving Fund balance is “slightly in excess” of \$2 million. McAhron asked that the loan of \$151,000 be approved “to keep these people on a path to getting the dam repaired.”

Patrick Early moved to approve the application by the Lake Edgewood Conservancy District for a Flood Control Revolving Fund loan in the amount of \$151,000 for costs associated with the District’s establishment and for engineering costs associated with preparation of the District Plan. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

**DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY**

**Consideration of preliminary adoption of miscellaneous rule amendments to 312 IAC 18 governing entomology and plant pathology; Administrative Cause No. 09-146E**

Phil Marshall, State Entomologist and Director of the Division of Entomology and Plant Pathology, presented this item. He explained that two of the three rule amendments were initiated and recommended by the Invasive Species Task Force. The Task Force recommended amendment to the definition of “pest and pathogen” to include natural resources, which “will give us more flexibility to address invasive species related to forests, natural resource areas, where the current definition does not.” Also amended is the definition of “quarantine”. He said the statute formerly declared an “infested area” by township, creating “inflexibilities with the biological world. For example, we could have an insect on this side of the road, which is the

township line, the other side of the road, I could not quarantine because it's physically not present in the township." The definition is proposed to be amended to change "township" to "area". The agency could define a boundary that is "more recognizable by the industry and by the public to understand the quarantine."

Marshall explained that the third proposed amendment is to the rules governing nursery operations and fumigation as a recognized pre-plant treatment, primarily for bare root nurseries, to create pest and pathogen free products that are shipped within the state and outside of state boundaries. "To have this as a recognized method for us will allow us both for our normal operations of business plus also the quarantine requirements for trade between the states and even potentially if they were to go international.... It is a benefit to our state industry, our state nurseries, as well as our private nurseries".

Jane Ann Stautz questioned why methyl bromide is specified "when there may be alternatives".

Marshall agreed there are alternatives, and these are "listed indirectly" in 312 IAC 18-3-22(b)(2)." Methyl bromide is the compound currently used "so the Division of Forestry, in consultation with [the Task Force], asked to have it stated..., but then I said we have to list all other methods of fumigation. We cannot limit it to just that method".

Stautz said, "Especially given the current regulatory status on methyl bromide, it may be wise to be a little broader on your options for treatment."

Marshall agreed and said that methyl bromide would be one of the methods for fumigation.

Stautz asked whether it would be "appropriate to amend 312 IAC 18-3-22(b)(1) to read 'pre-plant soil fumigation is the preferred method'."

Marshall indicated that the amendment would be appropriate.

Jane Ann Stautz moved to give preliminary adoption of the proposed rule with an amendment to 312 IAC 18-3-22(b)(1) to read "pre-plant soil fumigation is the preferred and control method" and striking phrase "methyl bromide". Patrick Early seconded the motion. Upon a voice vote, the motion carried.

#### **NRC, DIVISION OF HEARINGS**

#### **Consideration of recommended report of the Natural Resources Commission with respect to the petition for creation of the Prairie Lakes Conservancy District (LaPorte Circuit Court Cause No. 46C01-0811-MI-569); Administrative Cause No. 09-032C**

Jennifer Kane, Hearing Officer, presented this item. She said the Petition for the Establishment of the Prairie Lakes Conservancy District was referred to the Commission by the LaPorte Circuit Court. The proposed conservancy district is for the purposes of: (1) providing water supply,

including treatment and distribution, for domestic, industrial, and public use; and (2) Providing for the collection, treatment, and disposal of sewage and other liquid wastes.

Kane summarized the recommended findings. Michigan City is seemingly willing to provide water and the collection, treatment and disposal of sewage and other liquid wastes for the planned community, Aspen Acres, within the proposed Prairie Lakes Conservancy District. The proposed conservancy district would maintain the water and sewer lines within its boundaries.

Kane said her recommended findings were “mostly positive”. For both purposes for which the Prairie Lakes Conservancy District is proposed, positive findings for economic and engineering feasibility were contingent on the conservancy district and the Michigan City utilities reconciling past agreements to include proper entity names and to clarify the existence of an agreement. Kane recommended that the Commission adopt the Hearing Officers’ report and recommended findings, as presented, for filing with the LaPorte Circuit Court. She noted that Ethan Lowe, attorney for Petitioners, was present.

Ethan Lowe said he represented the Petitioners for creation of the Prairie Lakes Conservancy District. The proposed district would be created on a 412-acre tract of land located in unincorporated LaPorte County, just west of Michigan City. He said his clients consist of Edward Zeman and four subsidiaries of Zeman Homes and Neighborhoods. “We are looking to create the district as part of the expansion of an existing mobile home community. We have taken note of the issues with regards to the agreements with Michigan City. I was hoping to be able to resolve all those issues this morning, but unfortunately because of issues outside of our control, we’ve not been able to do that. We anticipate at this point in time that we will be introducing some evidence at the final hearing before the LaPorte Circuit Court to button up any of those outstanding issues.” Lowe said the Petitioners are “excited to get the matter set for final hearing to get the district created and begin working on the district plan.” He requested that the Commission adopt the report and recommended findings of the Hearing Officer.

Doug Grant moved to approve the recommendations of the Hearing Officer as the Commission’s recommendations to the LaPorte Circuit Court for the proposed Prairie Lakes Conservancy District. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

**Consideration of report of hearing officer, including findings and proposal to the Natural Resources Commission as to its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Hoosier Hills Marina, Inc.; Administrative Cause Number 09-094P**

Sandra Jensen, Hearing Officer, presented this item. She noted that Jeff Dukes, President of Hoosier Hills Marina, filed a petition for a rate increase on March 18, 2009. Hoosier Hills Marina is located on Patoka Lake and is under a long-term lease agreement with the Department. She explained that petition was reviewed under the Commission’s nonrule policy document, Information Bulletin #20, which implements an informal process for the consideration of rate requests for resorts and marinas under lease with the Department of Natural Resources.

Jensen stated that the petition requested rate establishment for two 80-foot by 22-foot boat slips that were installed and put into service during the 2009 boating season. Hoosier Hills Marina coordinated with the Department in setting an interim annual per slip rate for the two slips at \$4,840 for the 2009 boating season. Jensen explained that the interim rate was based upon a square footage calculation for Hoosier Hills' existing 80-foot by 20-foot slips. She explained that Hoosier Hills is "simply seeking the Commission's ratification of that rate".

Jensen said that no comments were received during the public hearing and no written comments were received during the review process. She said that Hoosier Hills provided a list of five comparable facilities including their rates for slip rental. Jensen said that she, as well as the Department, reviewed the list and slip rates, and determined that the requested rate is "less than four" out of the five comparable facilities provided. "All the evidence in the record reveals that the interim rate that was set is reasonable". Jensen recommended that the Commission recommend to the U.S. Army Corps of Engineers that Hoosier Hills Marina be authorized to set the rate of \$4, as a permanent rate 840 for the two 80-foot by 22-foot boat slips.

Jane Ann Stautz moved to approve the recommendation to the U.S. Army Corps of Engineers in setting the interim rate, as charged by Hoosier Hills Marina, of \$4,840 for the two 80-foot by 22-foot boat slips as a permanent rate. Michael Reed seconded the motion. Upon a voice vote the motion carried.

**Consideration of report of hearing officer, including findings and proposal to the Natural Resources Commission as to its recommendations to the U.S. Army Corps of Engineers in the matter of petition for rate increase by Fourwinds Resort and Marina; Administrative Cause Number 09-093P**

Sandra Jensen, Hearing Officer, also presented this item. She explained that Jeffrey Hammond, the General Manager of Fourwinds Resort and Marina ("Fourwinds"), filed a slip rate increase petition on March 28, 2009. Fourwinds is operated on Monroe Lake under a long-term lease with the Department. She noted that Fourwinds petitioned for an across-the-board 5% increase for all slips and easy ports, and provided a spreadsheet of approximately 20 comparable facilities and their associated slip rates.

Jensen noted that the Department, with agreement by Fourwinds, believed that two of the facilities included on Fourwinds' list of comparable facilities were particularly similar to Fourwinds in terms of amenities and facilities were Kent's Harbor and the Hammond Marina. During the public hearing Mr. Hammond advised that it believed the marina most comparable to Fourwinds was Jamestown Marina, located in Kentucky. Based upon that presentation, Fourwinds supplemented its list of comparable facility's rates to include Jamestown Marina's rates. She said that the remaining comparable facilities included on Fourwinds' comparable facilities list "were considered, but greater emphasis was placed on the comparison" of Fourwinds' current rates to those current rates being charged by three facilities, Jamestown, Kent's Harbor, and Hammond Marina. She noted that Fourwinds' slip rates "in most instances were already higher" than the rates charged by these three marina facilities. Jensen said that a "general comparison" of all the rates charged by the other comparable facilities indicated that

there were certain marinas located in Delaware and Maryland that charge “routinely higher” rates than Fourwinds’ rates, but “across the board” most of the other marinas had lower rates.

Jensen said that eleven comments were filed and all were in opposition to Fourwinds’ petition for rate increase. She noted that the report references Fourwinds’ “tremendous improvements” to its facility and its anticipated facility improvements. “There is no intent to stifle [Fourwinds’] efforts to do that; however, at this point, based upon all of the information contained within the record, I cannot recommend to the Commission that this rate increase petition be granted.”

Michael Reed asked for clarification on the Commission’s jurisdiction regarding petitions. “Are we to look at the margins that they are making on this piece of their business?”

Jensen said the Commission’s evaluation is “predominantly” controlled by the contract between the Department and the Army Corps and between the Department and the individual marinas. She noted that the Commission’s nonrule policy document, Information Bulletin #20, sets the evaluation process. “The issue is a comparison of rates that are being charged by other marinas that are comparable in terms of facilities and amenities”.

Reed then commented, “So, it’s a market place assessment and they are already too high, and this would make them even higher.”

Jensen agreed, and stated, that Fourwinds is “slightly higher” than the three facilities that are “most” comparable to Fourwinds.

Phil French asked whether the Commission recommended approval to the Army Corps of a rate increase filed by Fourwinds in 2007.

Jensen explained that Fourwinds filed a petition for an increase in 2007; and the Commission recommended to the Army Corps that certain of the requested rate increases be approved. All of the increases sought by Fourwinds in 2007 were not recommended for approval.

Michael Reed moved to recommend denial to the U.S. Army Corps of Engineers of the petition for slip rate increase as filed by Fourwinds Resort & Marina. Doug Grant seconded the motion. Upon a voice vote, the motion was granted.

**Consideration of final adoption of amendments to 312 IAC 18-3-18, which governs standards for control of the emerald ash borer, adding area to the quarantine; LSA Document #09-85(F); Administrative Cause No. 08-207E**

Jennifer Kane, Hearing Officer, presented this item. She said the proposed amendments would add counties and townships to the emerald ash borer quarantine. She provided a map of the Indiana quarantine area, which also depicted additional areas found to be infested with emerald ash borer, but not included in the present rule amendment proposal.

Director Carter asked Phil Marshall, State Entomologist, to provide the Commission with an update on the Department's efforts regarding the emerald ash borer and its impacts to Indiana's resources at a future meeting. Marshall agreed to do so.

Jane Ann Stautz moved to give final adoption of amendments to 312 IAC 18-3-18 to add areas to the emerald ash borer quarantine. Mary Ann Habeeb seconded the motion. Upon a voice vote, the motion carried.

**Consideration of final adoption of proposed amendments to 312 IAC 9, concerning general requirements and licenses for hunting deer, to reorder language for improved clarity, simplicity, and continuity; LSA Document #09-44(F); Administrative Cause No. 08-189D**

Sandra Jensen, Hearing Officer, also presented this item. She explained that the proposed rule is the first "housekeeping" rule amendment package from Stage 2 of the Comprehensive Fish and Wildlife Rules Enhancement Project. She noted the intent of the proposed amendments was "not to make significant" substantive amendments. Jensen noted, however, that some "minor" substantive changes are proposed along with two substantive amendments deemed necessary to correct potential inconsistencies between existing rules and authorizing statutes. She said the proposed rule package includes amendments to 312 IAC 9-3-2 through 312 IAC 9-3-9, and 312 IAC 9-12.

Jensen said public input associated with the rule proposal has been "positive". She highlighted a few comments that expressed concern regarding the amendments to increase of youth age from 16 to less than 18 years of age at 312 IAC 9-12-2, and the exemption from the Hunter Education requirements for an individual hunting under an apprentice license at 312 IAC 9-12-2 and 312 IAC 9-12-3. Jensen explained these amendments are "necessary to eliminate inconsistencies" between existing statutes and rules.

Jensen said that the proposed amendment to 312 IAC 9-3-8 would change the beginning date for hunting by firearms on national wildlife refuges and military reserves from November 1<sup>st</sup> to October 1<sup>st</sup>, which is during archery season. She explained that the amendment was proposed in an effort to aid federal property managers in population control, and also to accommodate military training schedules. Jensen said comments were received that reflected concern that hunting with firearms in these wildlife refuges would interfere with archery season in adjacent areas by "spooking" the deer. She said the comments "raise a valid concern" and indicated the proposed amendment may not be appropriate for inclusion in this non-substantive rule amendment package. Jensen deferred to the Commission as to the inclusion or omission of the amendment in the instant rule proposal; however, she recommended that the Commission give final adoption to the remaining proposed amendments. She explained that Exhibit A, attached to the Hearing Officer's report, includes the amendment to 312 IAC 9-3-8, to allow firearms hunting on wildlife refuges and military reserves to begin on October 1<sup>st</sup>. Jensen further explained that Exhibit B offered an appropriate revision in the event the Commission chose to grant final adoption to all of the amendments except to allow hunting deer with firearms on wildlife refuges and military reserves to begin on October 1.

The Chair noted that the Hearing Officer's report did not include a "huge" concern on the amendment.

Jensen said, "There are not large numbers [of comments]. My concern about [the amendment] is not so much in the numbers; it was the fact that this package had been put forward as a non-substantive amendment package, and I knew that was a concern of the Commission all along".

The Director asked whether the proposed rule amendment to 312 IAC 9-3-8 was initiated by the federal property managers. Jensen answered in the affirmative.

The Chair asked, "Is this a big enough issue that we would pull it out like we have done for some other things, or if it's an important management tool or issue for the federal property managers and it doesn't effect the hunting community that we take it out and cause them heartburn, what's a bigger issue for this Commission to do to keep its integrity?"

Patrick Early said, "If more people knew about this, there would probably be more comments and concern. I would support pulling [the amendment to 312 IAC 9-3-8] out just so we can remain consistent, because I do think that is a substantive change". He said the proposed amendment should be processed separately.

The Chair said, "The last thing I want to do is move something forward that I don't personally have enough information to make a decision on, and then find out that we did something with an unintended consequence. We've kept our word that this was going to be non-substantive".

Patrick Early moved to give final adoption of proposed amendments to 312 IAC 9, as proposed, with the exception of proposed amendment to 312 IAC 9-3-8, which would have changed the beginning date for hunting by firearms on national wildlife refuges and military reserves from November 1<sup>st</sup> to October 1<sup>st</sup>, to be included in a separate rule. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

**Consideration of final adoption of proposed amendments to 312 IAC 9-3-4 to allow a youth hunter to take either an antlered or antlerless deer during the special youth deer season; LSA Document #09-60(F); Administrative Cause No. 09-019D**

Sandra Jensen, Hearing Officer, also presented this item. She noted that the "overwhelming majority" of comments favored the adoption of amendments to 312 IAC 9-3-4 to allow a youth hunter to take either an antlered or antlerless deer during the special youth deer season. Jensen also noted that the comments in support of the rule amendment indicate that the "youth seasons were intended to recruit young hunters...and to serve that recruitment purpose that it is important that the youth hunter be able to take the first deer that is within range". She said some comments expressed concern that the proposed rule amendment was "inconsistent" with the "one-buck" rule. Jensen explained that the proposed amendment would prohibit a youth who takes an antlered deer during the youth season from taking another antlered deer during any other hunting season. She then recommended final adoption of the proposed amendments as presented in the Commission's packet.

Phil French said, “My biggest concern on this is that the comments we’ve received came from probably adults. How many did we receive that were from youth?” Jensen answered that a few comments were from youth.

French then said, “It all depends on youth hunting and your definition of youth hunting. Is youth hunting seeing a small buck come out and you shoot a small buck? There is no preservation for understanding about taking the right size of deer and the type of doe, whether it be a doe first, and understanding the right and proper kill”.

Jensen said, “You would hope that the adult that is required to be with that youth hunter would have that sense for them.”

Patrick Early moved to give final adoption of amendments to 312 IAC 9-3-4 to allow a youth hunter to take either an antlered or antlerless deer during the special youth deer season. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of final adoption of proposed amendments to 312 IAC 6 and 312 IAC 10 governing prospecting of hard minerals resources in navigable and nonnavigable waterways; LSA Document #09-80(F); Administrative Cause No. 08-105W**

Steve Lucas, Hearing Officer, presented this item. The rule proposal “is a culmination of a lot of work by a lot of people.” He reflected the Commission and the Advisory Council had “extensively reviewed the proposal, and members of the Advisory Council and the DNR made a site visit to a stream to observe a prospecting activity, and amazing participation and insight from the prospectors” was provided.

Lucas said Carle Kelle and Mike Phelps, from the prospecting community, attended the public hearing held in Indianapolis. Kelle, Phelps and other prospectors worked with the Commission and the Division of Hearings in a “very gentlemanly fashion. This has been a very positive and cooperative effort in coming up with a proposition that hopefully has legs to stand on and can move forward.” Lucas then recommended final adoption of the proposed amendments as presented.

Mike Phelps expressed appreciation for the efforts of the Commission, Advisory Council, and the Department regarding the rule proposal. “I know creating new rules to govern some new activity...would be difficult and time consuming. We’ve gone a long way and had a lot of views. I think it’s been in the interest of the environment, which has been taken well into consideration, as well as the interest of the people involved in the activity.” He concluded by expressing his support for the proposed rule amendments.

Carl Kelle said, “I would like to echo what Mike [Phelps] said. Thank you so much for giving us your ear. Thank you for all the time you spent going out into the field.” There are “maybe only a few hundred” people that participate in recreational prospecting in Indiana. Kelle said that he,

personally, and speaking on behalf of the Southern Indiana Gold Prospectors Association, “completely support” the proposed rule amendments.

Patrick Early moved to give final adoption to amendments to 312 IAC 6 and 312 IAC 10 governing prospecting of hard minerals resources in navigable and nonnavigable waterways. Brian Blackford seconded the motion. Upon a voice vote, the motion carried.

**Consideration of final adoption of proposed amendments to 312 IAC 6 governing the placement of structures in navigable waters; LSA Document #09-137(F); Administrative Cause No. 08-009L**

Steve Lucas, Hearing Officer, also presented this item. He said the proposed amendments to 312 IAC 6 were initiated by the Advisory Council with “a lot of input from others.” He explained that rules “modeled from public freshwater lake standards pertaining to group piers, marinas, and lawful nonconforming uses were modified and put in another statutory context—that is of navigable waters.” He acknowledged there were important differences between the statutory design for managing public freshwater lakes, as compared to navigable waters, and the effort was to incorporate these differences in the proposed rule. “For example, a major thrust for public freshwater lakes is the regulation of temporary structures, but generally only permanent structures can be regulated on navigable waters. In many other regards, the proposed navigable waters rules are pretty similar to the public freshwater lakes rules, and they carry forth the spirit of the rules that the Commission has already implemented and that we already utilize for public freshwater lakes.” Lucas said the current proposal might be “a little ahead of the curve, because most of our litigation is with respect to public freshwater lakes, but we are getting more interest in navigable waters.” He cited the West Fork of the White River in Indianapolis, the St. Joseph River in St. Joseph and Elkhart Counties, and Burns Portage Waterway in Porter County as examples. Lucas then presented the proposed rule amendments for consideration as to final adoption.

Donald Ruch moved to give final adoption of amendments to 312 IAC 6 governing the placement of structures in navigable waters as presented. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

**Consideration of Recommendation of Final Action on Readoption of Rule (312 IAC 6) governing navigable waterways; Administrative Cause No. 09-001W (LSA Document #09-152(F))**

Steve Lucas, Hearing Officer, also presented this item. He said the proposed readoption of 312 IAC 6, which governs navigable waterways, was the last of this year’s re-adoption of articles under Title 312. “It is important that the Commission give this recodification final adoption, because if not the rule would cease to exist at the end of this year, and would additionally undo the actions that the Commission did in the last two agenda items.”

Mary Ann Habeeb moved to readopt 312 IAC 6 in its entirety. Phil French seconded the motion. Upon a voice vote, the motion carried.

#### **ADJOURNMENT**

The meeting was adjourned at approximately 2:01 p.m., EDT.

#### **COMMISSION TOUR**

The Commission toured Prophetstown State Park beginning at 10:00 a.m. Included were presentations at the office with a showing of land acquisitions and anticipated acquisitions, including challenges to these efforts; a presentation at Historic Prophetstown; a visual overview from the park property of aggregate operations by Vulcan Materials Company and DNR plans for a future 120-acre lake within the park; a drive-through explanation of the current campgrounds and an explanation of their anticipated expansion; a drive-through explanation of the park's core areas; an overview and description of the Prophetstown Fen Nature Preserve (dedicated by the Commission in its November 2008 meeting); a modest INDOT wetland mitigation project within the park for activities along S.R. 43, now completed, and a more-ambitious mitigation project within the park for the Hoosier Heartland Highway Project, now in progress (including YHCC participation); and identification of the site and significance of the Kethippecanunk. The tour concluded with lunch at 12:00 noon.